

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAY - 7 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Federal-State Joint Board )  
on Universal Service )

CC Docket No. 96-45

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REPLY COMMENTS OF AT&T CORP.

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## SUMMARY

The comments in this proceeding confirm that Section 254 of the Telecommunications Act of 1996 requires fundamental changes in the provision of universal service support. As shown in Part I, there is broad consensus that the current system of implicit cross-subsidies must be wholly eliminated. These subsidies not only prevent more efficient competitors from challenging incumbent providers in local exchange markets; they also threaten competition in the interexchange market by making toll providers vulnerable to price squeezes by local exchange carriers. Thus, the only way to comply with the Act's command that all subsidies be "explicit," "equitable" and "nondiscriminatory" is to strip all implicit subsidies out of access charges and replace them with a competitively neutral funding mechanism.

For the same reasons, there is substantial agreement that the Commission should adopt a total service long-run incremental cost ("TSLRIC") standard to determine local exchange costs and eligibility for universal service support. And there is similar agreement that the TSLRIC of local exchange service should be calculated using an appropriate cost estimate.

The Act's goals of promoting local competition while advancing universal service cannot be achieved, however, if the Commission acquiesces in the requests by some commenters to use historical costs to determine a LEC's eligibility for universal support. Using historical costs would permit LECs to obtain universal service subsidies for local exchange facilities that

are obsolete, redundant or even unnecessary, and would allow the LEC to thwart entry by more efficient providers.

Compliance with Section 254's commands likewise requires the Commission to reject the request by a number of LECs that the Commission phase out the current implicit subsidies over a four-year transition period in order to avoid "rate shock." Indeed, there should be no rate shock at all, given the facts that local service rates in most areas are already compensatory, and, to the extent the LECs legitimately require subsidies to provide service, the competitively neutral mechanism would provide them. Moreover, as many of the LECs concede, rate rebalancing would likely reduce overall telecommunications bills and hence increase subscribership. There simply is no legitimate reason to delay the realization of those benefits.

Further, as AT&T's initial comments demonstrated, the Act clearly authorizes the Commission to implement this new universal service fund ("NUSF") by assessing a surcharge on all interstate and intrastate retail revenues from all telecommunications services. Section 254(b) provides that "all" telecommunications providers should make equitable and nondiscriminatory contributions to the fund and Section 254(d) provides that the Commission shall establish a "mechanism" that is "sufficient" to "preserve and advance universal service." Thus, contrary to the concerns of some commenters, Section 254(f) gives the states a complementary role and permits them to adopt funding mechanisms that do not "rely on or burden the Federal universal service support mechanisms."

These fundamental principles -- that universal service support must be equitable, nondiscriminatory and available to all "eligible" carriers -- likewise mandate that all NUSF subsidies (other than those flowing to small rural carriers) be portable. Thus, an alternative carrier must be entitled to a subsidy whenever it wins a customer from another carrier that received NUSF support to serve that customer. As recognized by the commenters, these principles also require that universal service support be technology-neutral. Accordingly, wireless as well as wireline carriers should be eligible for universal service support when providing the primary line to a subscriber's premises.

As shown in Part II, a similar consensus exists as to the implementation of the new universal service system. For example, there is widespread support for the Commission's preliminary determination of the core services that meet the requirements of Section 254(c)(1). There is also considerable support for the inclusion of several other basic services, most notably equal access to long distance services, because these services enjoy wide acceptance by residential customers. And the vast majority of commenters recognize that no "advanced services" should be subsidized at this time because of their limited use by the broader public. Moreover, although interexchange services should not be included in the core services, IXC's should be permitted to recover from the NUSF any below-cost provision of interexchange services that results from rate averaging requirements.

In addition, there is substantial agreement as to how the universal service subsidy should be calculated. Specifically, a LEC should be entitled to receive universal service support if the TSLRIC for providing core services exceeds the nationwide affordable rate. Similarly, a LEC would be entitled to the current level of subsidies provided under the Lifeline and Link-Up programs when providing services to low-income households.

Finally, the comments recognize that subsidies to schools, libraries and health care providers should be limited to telecommunications services and should not include customer premises equipment or inside wiring. For those telecommunications services entitled to universal service support, the simplest and most equitable system would be to permit qualified public institutions to obtain the deepest volume discount offered by the telecommunications carrier for similar service to a commercial user. A number of commenters offered other constructive proposals that could also form the basis for a fair and workable subsidy scheme. Accordingly, AT&T recommends that the Joint Board engage in further study of this issue while encouraging State authorities to expand the scope of the numerous voluntary programs already offered to these institutions.

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**REPLY COMMENTS OF AT&T CORP.**

Pursuant to the Commission's March 8, 1996 Notice of Proposed Rulemaking and Order Establishing a Joint Board, FCC 96-93 ("NPRM"), AT&T Corp. ("AT&T") submits these reply comments on the implementation of the universal service provisions of the Telecommunications Act of 1996 ("Act" or "1996 Act").<sup>1</sup>

There is an overwhelming consensus among the commenters that the Act requires fundamental changes in the manner in which universal service support is funded and provided. For example, virtually all commenters -- including interexchange carriers ("IXCs"), local exchange carriers ("LECs") and customer groups -- agree that the Act requires all universal service-related subsidies to be made explicit, and that they be funded by all telecommunications providers in a fully nondiscriminatory manner. As AT&T previously showed, and as many commenters agree, this bedrock principle requires that the costs used to determine the relevant subsidies be measured under a total service long-run incremental cost ("TSLRIC") standard, and that (except for small rural LECs) all subsidies be made portable. The statutory

<sup>1</sup> A list of parties filing comments is included as Appendix A.

requirements likewise foreclose the arguments, advanced by a few LECs, that the new subsidy system should be based in part on historical or "embedded" costs, and should be implemented over a multi-year period.

The comments likewise reflect broad consensus that the new universal service support mechanism can and should fund a core set of widely accepted services at a cost that is reasonable and therefore preserves strong public support for universal service. For example, most commenters agree that the NPRM correctly identifies the services that should be subsidized, and that other, "advanced" services should not be subsidized unless and until they gain widespread public acceptance. There is also widespread support for using a single, nationwide "affordable rate" as a baseline for determining who is entitled to a subsidy, and at what level, and for integrating the existing low-income support mechanisms into the new universal service fund ("NUSF"). Finally, there is broad agreement that the subsidies provided for schools, libraries and health care facilities should extend only to "telecommunications services," and not to premises equipment or inside wiring upgrades.

**I. THERE IS OVERWHELMING AGREEMENT THAT THE 1996 ACT REQUIRES FUNDAMENTAL CHANGES IN PROVIDING FOR UNIVERSAL SERVICE.**

As AT&T demonstrated in its comments, the Act requires a fundamental shift in the way universal service support is funded and distributed. In particular, the Act requires that all implicit cross-subsidies be removed from telecommunications



charges, and that those subsidies be refashioned so that they are "explicit," "equitable" and "nondiscriminatory" -- as they would be if they were implemented through a simple surcharge on telecommunications services. Most commenters recognize that this shift must occur, and indeed, there is general consensus on the broad outlines of the new regime.

Elimination of Implicit Subsidies. For example, many commenters agree that the existing subsidies must be stripped out of access charges. The current system of universal service funding is based on a set of subsidies that are built into access charges and assessed only on IXCs.<sup>2</sup> These subsidies seriously impede the development of competition in two important ways. First, the subsidization of local service rates inhibits local competition by preventing more efficient competitors from challenging incumbent providers. Second, subsidies also threaten competition in toll markets because, as the providers of exchange access increasingly enter those markets, other providers become vulnerable to anticompetitive price squeezes. Thus, as one commenter stated, the Act's "goal of encouraging competition would be frustrated if the present distortion of economic efficiency of consumers' purchases is permitted to continue." Ad Hoc at 23-24; see also CompTel at 9; MCI at 6-7.

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<sup>2</sup> These include the Carrier Common Line Charge ("CCLC"), DEM weighting, Long Term Support ("LTS"), and the Residual Interconnection Charge ("RIC"). Additional subsidies, such as the Universal Service Fund ("USF") and the Lifeline Assistance program, are separately assessed on interexchange carriers based on presubscribed lines, but have the same effect of raising interexchange rates in order to subsidize local service. See AT&T at 3 & nn.3-4.

Indeed, the Act by its terms forecloses the continuation of all implicit cross-subsidies. Section 254(k) forbids all telecommunications carriers to "use services that are not competitive to subsidize services that are subject to competition." Moreover, Section 254(b)(4) requires all providers to make "equitable and nondiscriminatory" contributions to universal service. Equally important, Section 254(e) requires all universal service support to be "explicit." As AT&T has shown, and most commenters agree, these provisions effectively require that the current subsidies be removed from access charges and redesigned as a surcharge on telecommunications services.<sup>3</sup>

Even many of the LECs agree with these fundamental points. Southwestern Bell, for example, acknowledges (at 4) that "recovering the interstate portion of universal service costs through interstate switched access charges is a form of implicit support and is inconsistent with the Act." Therefore, as Pacific Telesis recommends (at 12-13), "[t]he Commission's goal should be to identify subsidies in the current [access] rates and rate structures and refashion them into explicit, competitively neutral mechanisms." Thus, as many LECs acknowledge, "[t]he interstate CCL should be eliminated";<sup>4</sup> "DEM weighting should be

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<sup>3</sup> See AT&T at 5, 7-9; NYNEX at 9; BellSouth at 13; Pacific Telesis at 13-15; SWBT at 17-18; Sprint at 20; MCI at 14-15; LCI at 4-5; Ad Hoc at 22-24; MFS at 5-16; Teleport at 5; GTE at 16-18; see also U S WEST at 16-18 (characterizing implicit subsidies as "insidious[]").

<sup>4</sup> SWBT at 4; see Pacific Telesis at 13; Ameritech at 20-21; USTA at 18; see also MFS at 22; MCI at 14-15; Citizens for a Sound Economy at 13-15; Sprint at 20; California PUC at 20; (continued...)

eliminated immediately," because it "has absolutely no relationship to the affordability of service";<sup>5</sup> and the Commission should "eliminate recovery of [LTS] through interstate CCL charges and . . . LTS itself should be dismantled."<sup>6</sup> In short, the Joint Board should recommend -- and the Commission should adopt -- a wholesale reform of the subsidy system, and should not focus merely on certain limited aspects of the system such as CCLC and the present USF.

Cost-Based Rates and Subsidies. This shift in universal service funding will likely lead to a reduction of consumers' total bills for telecommunications services. Thus, as many commenters recognize, requiring that universal service be funded through a single, explicit surcharge should increase, not decrease, subscribership.<sup>7</sup>

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<sup>4</sup> (...continued)

Ad Hoc at 22-23; accord Ameritech at 21 ("There is no longer serious debate over the fact that . . . [CCL] charge[s] . . . are subsidies."). NYNEX (among others) erroneously takes issue with the Commission's conclusion that the CCLC is a subsidy. See NPRM ¶ 133; NYNEX at 6-8. The CCLC, however, undeniably "imposes a per minute charge on one class of service . . . to reduce flat rates for end users," and thus is clearly a "subsidy" that artificially increases interexchange rates and lowers local exchange rates. NPRM ¶ 113.

<sup>5</sup> Ameritech at 11-12. See also USTA at 18.

<sup>6</sup> Pacific Telesis at 14 (footnote omitted). See also USTA at 18; Bell Atlantic at 13.

<sup>7</sup> See MCI at 15; MFS at 5-16; Pacific Telesis at 14-15; Ameritech at 11; Bell Atlantic at 12-13; BellSouth at 11-12; Citizens Util. at 9; ALTS at 4-9; GTE at 14-16; Time Warner at 4-6; see also NYNEX at 6 (subscribership increased after implementation of SLC); Teleport at 1-2 (current USF and DEM support in excess of what is actually required to support universal service).

In this regard, it is critically important that the Joint Board and the Commission adopt TSLRIC as the economic standard. Not only should the Commission set access charges and interconnection rates at TSLRIC levels (in implementing Sections 251 and 252(d)),<sup>8</sup> the Commission should also use TSLRIC as its benchmark for determining whether universal service support is necessary for local service rates, and if so, for establishing the subsidy level. Only by using the TSLRIC standard can the Commission ensure that all implicit subsidies have been removed from the rates for telecommunications services as Section 254 requires, and that these impediments to the development of competition have been eliminated. The comments reflect overwhelming support for these fundamental principles.<sup>9</sup>

There is also general agreement that a TSLRIC-based cost estimate, such as a BCM-like model, should be used to determine subsidy levels.<sup>10</sup> Although a few commenters argue that historical costs should be used to determine local exchange

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<sup>8</sup> Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-182 (Apr. 19, 1996) ("Section 251 NPRM").

<sup>9</sup> See, e.g., Teleport at 7-9, 11-12; LDDS at 12; MCI at 10-13; Sprint at 8-14; Pennsylvania PUC at 17-20; Ad Hoc at 5-11; Telecom Resellers Assoc. at 11-14; U S WEST at 11; Pacific Telesis at 16-17.

<sup>10</sup> See, e.g., Teleport at 7-9, 11-12; Time Warner at 9; ALTS at 11-12; LDDS at 12; MCI at 10-13; Sprint at 9-14; GTE at 9-10; Florida PSC at 9-11; New York DPS at 6-8; Pennsylvania PUC at 17-20; NYNEX at 9-13; Pacific Telesis at 16-17; U S WEST at 11-12; Ad Hoc at 5-11.

costs,<sup>11</sup> the Commission should flatly reject this suggestion and instead require that all universal service support payments be made only on the basis of a TSLRIC-based cost estimate. It has been long recognized that permitting a LEC to obtain revenues -- whether in the rates it charges or the subsidies it receives -- on the basis of historical costs gives it a strong incentive to overinvest in its capital asset rate base.<sup>12</sup> Moreover, given a LEC's incentive to inflate costs, reliance upon historical costs would require state public utility commissions to undertake frequent, unwieldy and expensive inquiries into the value and prudence of any claimed costs.

For the same reasons, the Commission should reject the suggestion by some LECs that "embedded" costs be incorporated into whatever cost model is ultimately chosen by the Commission.<sup>13</sup> A local exchange carrier should be permitted to collect universal service support only when its TSLRIC (as determined by the appropriate cost estimate) is greater than the nationwide affordable rate (see infra, pp. 19-21). As the Commission has observed, "[e]conomists generally agree that prices based on [long-run incremental costs] give appropriate

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<sup>11</sup> See Rural Util. Serv. at 3-7, 15; Cincinnati Bell at 5-10; Alaska Tel. Assoc. at 2-7; Rural Tel. Coal. at 11-15; SWBT at 14-16; Ameritech at 12.

<sup>12</sup> See H. Averch and L. Johnson, Behavior of the Firm under Regulatory Constraint, 52 Am. Econ. Rev. (1962); see also Ad Hoc at 10-11.

<sup>13</sup> See GTE at 9; NECA at 6-7; SWBT at 14, 16; Minnesota Indep. Coal. at 11-14; Minnesota Telephone Assoc. at 2; Oregon & Washington ITAs at 12; U S WEST at 10-11.

signals to producers and consumers and ensure efficient entry and utilization of telecommunications infrastructure. They further agree that competitive markets, over the long run, tend to force prices toward [long-run incremental costs]."<sup>14</sup> The same principle applies with equal force to subsidies: forcing subscribers to subsidize a LEC's embedded costs in any fashion would distort the competitive market and, indeed, allow the LEC to thwart entry by other, more efficient potential competitors.<sup>15</sup>

In any event, it is doubtful that any significant portion of LEC assets would remain unrecovered, in any meaningful sense, under a proper TSLRIC standard. Any recent investment in local exchange facilities should have been made with the

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<sup>14</sup> Section 251 NPRM at ¶ 124; see also Notice of Proposed Rulemaking, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, et al., CC Docket No. 95-185, FCC 95-505, ¶ 4 (Jan. 11, 1996) ("We adopt policies that are intended to create or replicate market-based incentives and prices for both suppliers and consumers."); id. at ¶¶ 4-5 (by replicating market-based incentives in this manner, the Commission can ensure "the availability to consumers of goods and services at the lowest overall cost" and "an efficient level of innovation in terms of the development of new services and the deployment of new technology, as well as the efficient entry of new firms . . . . [so that] consumers should receive maximum benefit from their purchases of telecommunications services").

<sup>15</sup> For example, suppose that an incumbent LEC and a potential entrant could each provide core services at a TSLRIC slightly above the affordable rate, so that each would be entitled to an economic subsidy. Furthermore, suppose the incumbent LEC is permitted to recover historical embedded costs in addition to the subsidy. In that event, despite providing the same services at the same TSLRIC, the incumbent LEC would be entitled to collect larger universal service support subsidies than its competitor. Thus, the incumbent LEC could forestall entry by credibly threatening to use its universal service support subsidy to lower its retail prices below that of its competitor.

expectation of deregulation and resulting competition. As Ad Hoc observes (at 7), "[t]he onset of local competition (to date, barely present) did not take the LECs by surprise, and should certainly have been reflected in LEC construction planning. Regulators can and should reasonably expect that LECs have adjusted their business plans and construction programs for the onset of competition, including the possible loss of market share."

Further, most if not all of the Tier 1 LECs lobbied vigorously for the passage of the 1996 Act, which, in addition to facilitating local competition, provides them the opportunity to participate more readily as full service providers of new lines of business, such as video services, information services, Internet access services, and interexchange services. In addition, the LECs have also successfully convinced their regulators in most states to allow them to move away from rate of return regulation with its focus on historical embedded costs, to incentive regulation, with its focus on competitive pricing flexibility so that the LECs can better meet anticipated competition. At the same time, the LECs have modernized and expanded their plant facilities in anticipation of an expansion of business as a result of local competition and the provision of many new, non-basic services. Thus, most if not all of any difference between the TSLRIC for basic services and total LEC embedded costs can and should be attributed to the LECs' preparations to offer new services.

In any event, even if the monopoly LECs were somehow prevented from properly sizing their facilities in the past (and they were not), they will still be able to do so as they execute their business plans to provide competitive services. Full facilities-based competition will take, at a minimum, several years to develop.

For all these reasons, the Commission should make no provision for incorporating an additional measure of embedded costs on top of TSLRIC for basic, single-line service.

Finally, adoption of the principles outlined above may well avoid any need for increased rates in many or most areas. As the commenters observe, under a TSLRIC standard, local service rates in many areas are already fully compensatory.<sup>16</sup> In such areas, therefore, there would be no need for an increase in the subscriber line charge ("SLC") to compensate for the elimination of existing subsidies in access charges.

Transition Period. The Commission should likewise reject suggestions by a number of LECs that the Commission eliminate the current implicit subsidies slowly over a four-year transition period out of a fear that ratepayers may suffer "rate

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<sup>16</sup> See, e.g., MCI at 14-15 ("The prices for the local loop, including the CCL and SLC charges, are currently well in excess of their economic cost. An increase in the SLC coupled with an exactly offsetting reduction of the CCL will allow the LECs to continue to recover more than the true cost of the loop."); see also Florida PSC at 21-22; New York DPS at 3-4; Pennsylvania PUC at 23-24; Washington Util. & Trans. Comm. at 18-20; NARUC at 15-18; Maine PUC at 19. Cf. Ad Hoc at 22-24 (adjust SLC only for inflation).



shock."<sup>17</sup> As already noted, there is no reason to expect any significant "rate shock" because the evidence suggests that local service rates in most areas are already compensatory.

In all events, such a transition period would be entirely inappropriate. For one thing, it would be inconsistent with the Act, which as noted above flatly forbids all implicit cross-subsidies. Maintaining such subsidies, even if only for four years, would be directly contrary to this statutory prohibition. Moreover, as many of the LECs concede, any rate rebalancing would likely reduce consumers' overall telecommunications bills and increase subscribership.<sup>18</sup> Consumers should not be forced to wait for these benefits. Perhaps most important, the LECs' proposal -- which is to bulk-bill IXCs for CCL costs while continuing to subsidize local service rates -- is a thinly disguised attempt to protect themselves from emerging local competition during the critical early stages of its development. For all these reasons, a transition period would seriously undermine the central purposes of the Act.

Single, "Non-Jurisdictional" NUSF. As AT&T noted in its initial comments, once current subsidies are divorced from access charges, they should be consolidated into a single,

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<sup>17</sup> See USTA at 18; SWBT at 17-18; Ameritech at 12-13; NECA at 10-11; Keystone Arthur at 2.

<sup>18</sup> See MCI at 15; MFS at 5-16; Pacific Telesis at 14-15; Ameritech at 11; Bell Atlantic at 12-13; BellSouth at 11-12; Citizens Util. at 9; ALTS at 4-9; GTE at 14-16; Time Warner at 4-6.

competitively neutral surcharge on telecommunications services that would flow into a single new universal service fund administered by a neutral third party. AT&T at 8-9. Many commenters support this basic concept,<sup>19</sup> or its functional equivalent (e.g., a single surcharge flowing into two or three funds that disburse the money to the various recipients).<sup>20</sup> These commenters agree that such a system is necessary both to keep all subsidies "explicit" (see § 254(e)), and for administrative efficiency.<sup>21</sup> Furthermore, most commenters agree with the Commission's suggestion (NPRM ¶ 128) that the fund should be administered by a "non-governmental fund administrator" that would administer the fund in the most "efficient, fair and competitively neutral manner" possible.<sup>22</sup>

Moreover, the Act clearly authorizes the Commission to establish the NUSF as a comprehensive, "non-jurisdictional" means of funding universal service. The Commission should therefore establish a surcharge on all interstate and intrastate retail

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<sup>19</sup> Sprint at 18; Ad Hoc at 24; CompTel at 16; U S WEST at 2; Florida PSC at 8-9; Citizens Util. at 7, 10-17; Teleport at 3; PCIA at 12-13; NCTA at ii-iii.

<sup>20</sup> BellSouth at 2-3, 12-13; Pacific Telesis at 12-14, 22-23; SWBT at 6-8; MFS at 13-17; LCI at 4-5.

<sup>21</sup> See Ad Hoc at 24; PCIA at 12-13; Teleport at 3; Sprint at 2-5.

<sup>22</sup> Indeed, many commenters echoed AT&T's specific proposal (AT&T at 22 n.34) that the administrator could be a major accounting firm, a data processing firm, or a financial institution. See Ameritech at 24; MFS at 24; LCI at 6; Sprint at 23-24; Cincinnati Bell at 5; Missouri PSC at 21-22; New Jersey BPU at 5; Ohio PUC at 16-17; ACTA at 13; Commun. Resellers Assoc. at 14-15; Airtouch at 11; New Mexico Attorney General at 5-6.

revenues from all services.<sup>23</sup> The Commission is authorized to establish such a surcharge both by Section 254(b)(4), which authorizes the Commission (in conjunction with the Joint Board) to base its universal service policies on the principle that "all" telecommunications providers should make equitable and nondiscriminatory contributions, and by Section 254(d), which specifically provides that the Commission shall establish "mechanisms" that are "sufficient" to "preserve and advance universal service." 47 U.S.C. § 254(d) (emphasis added).

Moreover, contrary to concerns of some commenters, 254(f) clearly allocates to the States a complementary role. In contrast to Section 254(d), Section 254(f) authorizes the States to establish "sufficient" mechanisms to preserve universal service only where the State has adopted definitions and standards that add to the federal requirements. Further, the States may adopt such mechanisms only where they would not "rely on or burden the Federal universal service support mechanisms." Moreover, under Section 254(f), a State may adopt universal service regulations only to the extent that they do not conflict with the Commission's rules. Thus, the Act expressly contemplates that the NUSF itself will be fully "sufficient" to

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<sup>23</sup> See NPRM ¶ 125; AT&T at 8-9. Section 254(d) does not limit the federal surcharge to the revenues from interstate services.

preserve universal service, as a number of commenters recognize.<sup>24</sup>

For the same reasons, the Commission must divorce universal service contributions from the jurisdictional separations rules. Indeed, the "non-jurisdictional" NUSF would obviate the need for difficult jurisdictional determinations; it would promote the "explicitness" of the universal service subsidies; and it would further the development of competition by establishing uniform and predictable rules, rather than a hodgepodge of conflicting funding mechanisms.<sup>25</sup>

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<sup>24</sup> See, e.g., Ameritech at 22-23; MFS at 23; Teleport at 13; LDDS at 18; MCI at 15-16; Sprint at 16-17; GTE at 16-18; NCTA at 24; Western Wireless at 5.

<sup>25</sup> A number of commenters address issues related to information (i.e., enhanced) services and providers of those services. First, there is a broad consensus that universal service support should be made available only for basic telecommunications services, not for information services. See ITAA at 5; IIA at 3; ITIC at 5-6; but see ISA at 10. Second, the commenters are correct that information service providers, like all customers of basic telecommunications services, should pay the universal service support surcharge on their purchase of telecommunications services from carriers. See ITAA at 17-18; IIA at 6; ITIC at 9; ISA at 11-12. Third, private networks providing basic telecommunications services should not have to assess a universal service support surcharge on their internal users. See ITAA at 17-19; ITIC at 9. However, to the extent that those private networks resell their services to third parties as common carriers, they, like other resellers of basic services, should contribute to universal service support by a surcharge on their retail revenues. As resellers, they would, of course, receive a surcharge credit on the services they resell. See AT&T at 8 n.10, 22. Finally, a number of parties contend that information service providers, whether providing online services or Internet access, should not be required to contribute to universal service support via a surcharge on their retail revenues. See ITAA at 17; IIA at 6; ITIC at 9-10; ISA at 6-15. A number of important issues, including access reform, must be resolved before this issue can be considered.

Portability of Universal Service Support. As AT&T showed (and as many commenters agree), with the exception of subsidies to small rural carriers, all subsidies from the NUSF should be portable -- i.e., they should follow the customer, not the carrier. This principle follows naturally from the Act's requirement that (apart from rural areas) universal service support must be made available to all "eligible" carriers -- i.e., all carriers in that area that satisfy the requirements of Section 214(e)(1) and (2).<sup>26</sup> Thus, as USTA acknowledges (at 17), "other eligible carriers should receive the same level of support per line as the incumbent exchange carrier."

As a practical matter, the implementation of these requirements would necessitate a transfer of NUSF support whenever an alternative carrier wins a customer from another carrier. As MCI puts it, "the provider selected by the customer should be entitled to the per-line subsidy."<sup>27</sup>

Furthermore, the Commission should reject any suggestion that only wireline -- and not wireless -- carriers

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<sup>26</sup> Section 214(e)(2) requires a State to certify as an eligible carrier any carrier in the relevant area that offers the services encompassed within the definition of universal service and that advertises the availability of such services and the charges using media of general distribution. This would include small rural carriers as well. Initially, however, small rural carriers should be exempted from the portability requirement as the administrative costs of enforcing the requirement would outweigh the benefits. This exemption should end after a state commission requires rural carriers to interconnect to new entrants pursuant to § 251(f)(1)(B). See AT&T at 9 n.12.

<sup>27</sup> MCI at 5; see also MFS at 13-16; Teleport at 14-16; California PUC at 13-14.

should be eligible to receive universal service support when wireless carriers provide the primary line to a subscriber's principal residence. Nothing in the Act limits universal service support to carriers that provide core services via wireline. To the contrary, the Act specifically prohibits such discrimination.<sup>28</sup> Indeed, there is a consensus among the commenters,<sup>29</sup> including the RBOCs,<sup>30</sup> that the Act requires universal service to be provided in a competitively neutral manner.

Moreover, Section 214(e) by its terms permits a wireless carrier to be an "eligible" carrier, as long as it is offering the core services at least partially over its own facilities. 47 U.S.C. § 214(e)(1). Providing incumbent LECs with universal service subsidy in high cost regions, while denying such payments to wireless carriers providing identical services (but with a different technology), would flatly contradict this mandate. Indeed, as the Universal Service Task

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<sup>28</sup> See 47 U.S.C. §§ 254(b)(4), (d) and (e); see also S. Rep. 104-23, 104th Cong., 1st Sess., p. 25 (1995) ("[T]he Committee intends that the universal service support mechanisms . . . shall be, to the extent possible consistent with the goal of ensuring universal service, transparent, explicit, equitable and nondiscriminatory to all telecommunications carriers.") (emphasis added).

<sup>29</sup> See, e.g., LCI at 5-6; CompTel at 9; ACTA at 3-4; Telecom. Resellers Assoc. at 8-10; MCI at 16-18; Sprint at 3; Citizens for Sound Economy at 2-3; Winstar at 7-10; Western Wireless at 10-11; Vanguard Cellular at 7-9; PCIA at 6-9; CTIA at 2-4; Tele-Commun. at 4; Frontier at 8-10; GTE at 16-18.

<sup>30</sup> See BellSouth at 4; Ameritech at 4-5; U S WEST at 15-16; Pacific Telesis at 2 n.1.

Force recently noted, "[a]ssistance programs that provide subsidies to incumbent services while denying assistance to new entrants may impede the development of competition."<sup>31</sup>

**II. THE COMMENTS ESTABLISH THAT THE NEW USF SUPPORT MECHANISM SHOULD FUND A CORE SET OF QUALITY SERVICES AT A REASONABLE COST.**

The comments likewise reflect substantial consensus as to the implementation of the new universal service system. For example, there is general agreement on the definition of universal service. And many parties have offered constructive proposals regarding discounts for schools, libraries and health care facilities.

Definition of Universal Service. In its comments, AT&T strongly endorsed the Commission's preliminary determination of the core services that meet the requirements of Section 254(c)(1) and are therefore eligible for universal service support: voice grade dial tone, touch tone, residential single party service, and access to emergency and operator services. See AT&T at 11-14; NPRM ¶¶ 18-22. There is nearly universal support from the commenters for the Commission's proposal.<sup>32</sup>

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<sup>31</sup> Universal Service Task Force, Preparations for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms 30 (Feb. 23, 1996).

<sup>32</sup> See, e.g., MFS at 16; GSA at 3; SBA at 6-8; Rural Util. Serv. at 9; MCI at 3; Sprint at 6-7; Cincinnati Bell at 4; Florida PSC at 6; Pennsylvania PUC at 13; South Carolina PSC at 3-4; Ameritech at 5; Bell Atlantic at 7; BellSouth at 5-6; NYNEX at 11-12; SWBT at 8; U S WEST at 5-6; Tele-Commun. at 3-4; Time Warner at 4; CompTel at 12-13; NCTA at 5; ACTA at 5.

Many commenters also agree with AT&T's position that equal access to long distance services, white pages directory listing and access to directory assistance have achieved sufficient public acceptance and usage to be included in the core services proposed by the Commission in the NPRM, in addition to local number portability.<sup>33</sup> This is particularly true of equal access to long distance services, which not only is demanded and provided to the vast majority of residential customers, but is necessary to facilitate long distance competition, and therefore is in the public interest. See 47 U.S.C. § 254(c).<sup>34</sup>

Moreover, as these commenters recognize, the Commission properly excluded any "advanced services" from universal service support because of their limited use by the broader public. See § 254(c)(1). Indeed, any attempt to require subsidization of such services at this time would be counterproductive, because it would dramatically expand the size of the NUSF and thus erode public support for all universal service support.<sup>35</sup> Of course, as the market evolves and prices for advanced services are reduced by technological innovations and competitive forces, the

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<sup>33</sup> See, e.g., Time Warner at 4; ALTS at 9-10; Cincinnati Bell at 4; Florida PSC at 7; Pennsylvania PUC at 13; South Carolina PSC at 3-4; Ameritech at 5; NYNEX at 11-12; SWBT at 8; U S WEST at 5-6; New Mexico Attorney General at 3-4; Alabama-Mississippi Tel. Assoc. at 3; AARP at 9-10.

<sup>34</sup> AT&T supports the Commission's call to make interexchange services more affordable for low-income consumers. See NPRM ¶ 55. Indeed, as the Commission has recognized, AT&T has taken the lead role in this area.

<sup>35</sup> See SBA at 5-6; MCI at 9; NYNEX at 1-2; Tele-Commun. at 8-9; Citizens Utilities at 4; ALTS at 9; GTE at 2-3.



Commission can and should consider expanding the set of core services to include those advanced services that gain widespread acceptance and otherwise meet the requirements of Section 254(c)(1).

Further, although AT&T does not believe interexchange services should be included in the core services group, interexchange carriers should be entitled to universal service support to the extent that the Commission adopts regulations that require carriers to provide interexchange services below costs (as determined by TSLRIC). Likewise, carriers should be permitted to recover from the NUSF for any below-cost provision of interexchange services that results from rate averaging. See 47 U.S.C. § 254(g).

Baseline for Calculating the Subsidy. There is also substantial agreement that a national "affordable rate" should be used in conjunction with the TSLRIC standard to determine the actual subsidy provided to carriers operating in high cost areas.<sup>36</sup> A single, nationwide affordable rate would clearly be easier to administer than -- and therefore far preferable to -- an attempt to set affordable rates on a state-by-state basis. It would also prevent a state from attempting to export costs to

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<sup>36</sup> See, e.g., USTA at 14-16; Pacific Telesis at 18-19; Ameritech at 9-12; BellSouth at 10-14; NYNEX at 9-13; U S WEST at 8-11; MCI at 10-13; CompTel at 7-15; Sprint at 8-14; Ad Hoc at 17-20; Time Warner at 7-8; Citizens Util. at 10-12; Florida PSC at 5; Pennsylvania PUC at 20.